

IN THE UNITED STATES PATENT  
AND TRADEMARK OFFICE



Applicant: EBY, ET AL.

Serial No.: 10/626,080

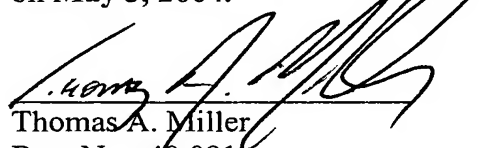
Filed: JULY 24, 2003

Title: DESKTOP FILING SYSTEM

Group Art Unit: NOT YET ASSIGNED

Examiner: NOT YET ASSIGNED

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) mail, postage prepaid, in an envelope  
) addressed to:  
) Commissioner for Patents, P.O. Box  
) 1450, Alexandria, VA 22313-1450,  
) on May 3, 2004.

)   
) Thomas A. Miller  
) Reg. No.: 40,091

**PETITION UNDER 37 C.F.R. §1.47(A)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This petition is made under the provisions of 37 C.F.R. §1.47(a). Transmitted herewith are inventor declarations executed by joint inventors David Eby, Aaron W. Smith, Tobin Vetting and Gilius A. Gaska for themselves and on behalf of their nonsigning coinventor, Jayson Serrault.

Further submitted herewith is a statement of fact by Thomas A. Miller in which he relates that attempts to secure inventor Serrault's signature on an inventor declaration for the above-identified patent application have been unsuccessful, based upon his firsthand knowledge of such attempts.

The last known residential address for joint inventor Jayson Serrault is:

Jayson Serrault  
7510 Greenway Blvd. #108  
Middleton, WI 53575

On the basis of these facts and for the reasons submitted herewith, it is respectfully requested that the Commissioner accord this application status under 37 C.F.R. §1.47.

The petition fee of \$130.00 is enclosed herewith. If there are any additional fees due, the Commissioner is directed to charge or debit Deposit Account No. 13-2855 under order number 29618/38939.

Should any questions arise over the form or substance of this petition and attachments, the office is encouraged to contact the undersigned attorney at the telephone number and address listed below.

Respectfully submitted for,

MARSHALL, GERSTEIN & BORUN LLP

**May 3, 2004**

By: 

Thomas A. Miller  
Reg. No.: 40,091  
6300 Sears Tower  
233 South Wacker Drive  
Chicago, Illinois 60606-6402  
(312) 474-6300

IN THE UNITED STATES PATENT  
AND TRADEMARK OFFICE



Applicant: EBY, ET AL.

Serial No.: 10/626,080

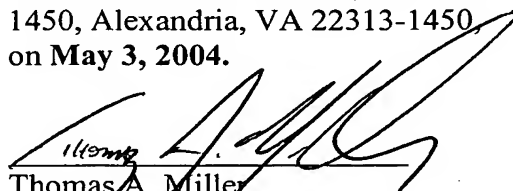
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) 1450, Alexandria, VA 22313-1450,  
) on May 3, 2004.

  
Thomas A. Miller  
Reg. No.: #0,091

**DECLARATION OF THE FACTS UNDER 37 C.F.R. §1.47(A)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

I, Thomas A. Miller, hereby state as follows:

1. I am authorized by Rubbermaid Incorporated (hereinafter "Rubbermaid"), the assignee of the above-identified patent application (hereinafter "the patent application") to make this statement in my capacity as patent counsel. An assignment executed by each of the joint inventors, except for Mr. Jayson Serrault, demonstrating that Rubbermaid is the assignee of the patent application is attached hereto as Exhibit A.

2. I make this declaration to provide facts known to me concerning the inability to secure joint inventor Jayson Serrault's signature on a declaration and assignment for the patent application. Mr. Serrault is a coinventor of the patent application. The other coinventors (Mr. Eby, Mr. Smith, Mr. Vetting and Mr. Gaska) have executed a declaration and assignment for the patent application for themselves and on behalf of their nonsigning joint inventor, Jayson Serrault. A copy of a declaration signed by each of the joint inventors, except for joint inventor Serrault, is attached hereto as Exhibit B.

3. The last known residential address for joint inventor Jayson Serrault is:

Jayson Serrault  
7510 Greenway Blvd. #108  
Middleton, WI 53735

4. On May 14, 2003, we sent a letter enclosing copies of a declaration, and an assignment directly to Rubbermaid's representative, Vicki Voltz, for signature by the inventors. A copy of the letter dated May 14, 2003 is attached hereto as Exhibit C.

5. On June 9, 2003, Ms. Voltz sent a letter enclosing the copies of the declaration and assignment to Mr. Serrault's last known address. A copy of this letter is attached as Exhibit D.

6. On August 1, 2003, Ms. Lynn Browning of Rubbermaid sent a second letter enclosing copies of the declaration and assignment to Mr. Serrault's last known address. A copy of this letter is attached as Exhibit E.

7. The envelope that contained the letter dated August 1, 2003, was returned as "undeliverable."

8. An internet search was performed to locate Mr. Serrault. The search was directed to anyone with the last name "Serrault" in the state of Wisconsin. The internet search indicated that no one in the state of Wisconsin has the last name "Serrault." Enclosed as Exhibit F is a copy of the results of the internet search.

9. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001 and that such willful false statements may jeopardize the validity of the patent application or any patent issued thereon.

Respectfully submitted for,

MARSHALL, GERSTEIN & BORUN LLP

May 3, 2004

By: 

Thomas A. Miller  
Reg. No.: 40,091  
6300 Sears Tower  
233 South Wacker Drive  
Chicago, Illinois 60606-6402  
(312) 474-6300

## ASSIGNMENT

Serial No: Not Yet Assigned

Filed:

Title: DESKTOP FILING SYSTEM

For \$10.00 (Ten Dollars) and other good and sufficient consideration, the receipt and sufficiency whereof are hereby acknowledged, the undersigned hereby assign to RUBBERMAID INCORPORATED (hereinafter "Assignee"), its successors and assigns, the entire right, title and interest in the invention or improvements of the undersigned disclosed in an application for Letters Patent of the United States, executed by the undersigned on , and in said application and any and all other applications, both United States and foreign, which the undersigned may file, either solely or jointly with others, on said invention or improvements, and in any and all Letters Patent of the United States and foreign countries, which may be obtained on any of said applications, and in any reissue or extension thereof.

The undersigned hereby authorize and request the Commissioner of Patents and Trademarks to issue said Letters Patent to said assignee.

The undersigned hereby authorize and request the attorneys of record in said application to insert in this assignment the execution date and/or filing date and serial number of said application when officially known.

The undersigned warrant themselves to be the owners of the interest herein assigned and to have the right to make this assignment and further warrant that there are no outstanding prior assignments, licenses, or other rights in the interest herein assigned.

For said consideration the undersigned hereby agree, upon the request and at the expense of said assignee, its successors and assigns, to execute any and all divisional, continuation, continuation-in-part and substitute applications for said invention or improvements, and any necessary oath or affidavit relating thereto, and any application for the reissue or extension of any Letters Patent that may be granted upon said application, and any and all applications and other documents for Letters Patent in foreign countries on said invention or improvements, that said assignee, its successors or assigns, may deem necessary or expedient, and for the aforesaid consideration the undersigned further agree upon the request of said assignee, its successors or assigns, in the event of any application or Letters Patent assigned herein becoming involved in Interference, to cooperate to the best of the ability of the undersigned with said assignee, its successors or assigns, in the matters of preparing and executing the preliminary statement and giving and producing evidence in support thereof, the undersigned hereby agreeing to perform, upon request, any and all affirmative acts to obtain said Letters Patent, both United States and foreign, and vest all rights therein hereby conveyed in said assignee, its successors and assigns, whereby said Letters Patent will be held and enjoyed by said assignee, its successors and assigns, to the full end of the term for which said Letters Patent may be granted as fully and entirely as the same would have been held and enjoyed by the undersigned if this assignment and sale had not been made.

BEST AVAILABLE COPY

WITNESS my hand this

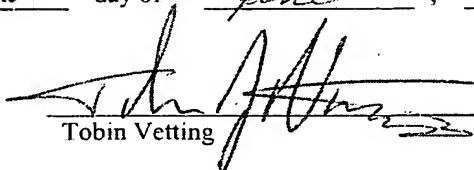
23rd day of June, 2003.

State of

WI

County of

Shelbygan


  
Tobin Vetting

On this 23rd day of June, 2003, before me, a Notary Public in and for the County and State aforesaid, appeared, to me personally known to be the same persons whose names are subscribed to the foregoing instrument, and acknowledged that they executed said instrument as their free and voluntary act and for the uses and purposes therein expressed.

WITNESS my hand and seal the same day and year last above given.

My Commission Expires:

10-5-2003

  
Notary Public

BEST AVAILABLE COPY

WITNESS my hand this

3rd day of June, 2003.

State of

County of

Ohio  
Wayne

Aaron W. Smith

Aaron W. Smith

On this 3rd day of June, 2003, before me, a Notary Public in and for the County and State aforesaid, appeared, to me personally known to be the same persons whose names are subscribed to the foregoing instrument, and acknowledged that they executed said instrument as their free and voluntary act and for the uses and purposes therein expressed.

WITNESS my hand and seal the same day and year last above given.

**VICKI M. VOLTZ**

Notary Public, State of Ohio

My Commission Expires: My Commission Expires May 7, 2007

Vicki M. Voltz  
Notary Public

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WITNESS my hand this

5th day of June, 2003.

State of

County of

Ohio  
Wayne

Gilias A. Gaska  
Gilias A. Gaska

On this 5th day of June, 2003, before me, a Notary Public in and for the County and State aforesaid, appeared, to me personally known to be the same persons whose names are subscribed to the foregoing instrument, and acknowledged that they executed said instrument as their free and voluntary act and for the uses and purposes therein expressed.

WITNESS my hand and seal the same day and year last above given.

**VICKI M. VOLTZ**

Notary Public, State of Ohio

My Commission Expires:

**My Commission Expires May 7, 2007**

Vicki M. Voltz  
Notary Public

**BEST AVAILABLE COPY**



WITNESS my hand this

2nd day of September, 2003.

State of

Wisconsin

County of

Dane

David C. Eby  
David C. Eby

On this 2nd day of Sept., 2003, before me, a Notary Public in and for the County and State aforesaid, appeared, to me personally known to be the same persons whose names are subscribed to the foregoing instrument, and acknowledged that they executed said instrument as their free and voluntary act and for the uses and purposes therein expressed.

WITNESS my hand and seal the same day and year last above given.

My Commission Expires:

10/22/06

Luth A. Witzke  
Notary Public

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**DECLARATION FOR PATENT APPLICATION**

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am an original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled:

DESKTOP FILING SYSTEM

the specification of which is attached hereto.

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by an amendment, if any, specifically referred to herein.

I acknowledge the duty to disclose all information known to me that is material to patentability in accordance with Title 37, Code of Federal Regulations, § 1.56.

**FOREIGN PRIORITY CLAIM**

I hereby claim foreign priority benefits under Title 35, United States Code § 119(a)-(d) of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

☒ no such foreign applications have been filed

☐ such foreign application have been filed as follows:

**EARLIEST FOREIGN APPLICATION(S), IF ANY FILED WITHIN 12 MONTHS  
(6 MONTHS FOR DESIGN) PRIOR TO THIS U.S. APPLICATION**

Application Number	Country	Date of Filing (dd/mm/yyyy)	Priority Claimed Under 35 USC 119
			___ Yes No ___
			___ Yes No ___
			___ Yes No ___

**ALL FOREIGN APPLICATION(S), IF ANY FILED MORE THAN 12 MONTHS  
(6 MONTHS FOR DESIGN) PRIOR TO THIS U.S. APPLICATION**

Application Number	Country	Date of Filing (dd/mm/yyyy)

**CLAIM FOR BENEFIT OF EARLIER U.S. PROVISIONAL APPLICATIONS**

I hereby claim priority benefits under Title 35, United States Code §119(e), of any United States provisional patent application(s) listed below:

☒ no such U.S. provisional applications have been filed.

☐ such U.S. provisional application have been filed as follows:

Application Number	Date of Filing (dd/mm/yyyy)	Priority Claimed Under 35 USC 119
		___ Yes No ___
		___ Yes No ___
		___ Yes No ___

**CLAIM FOR BENEFIT OF EARLIER U.S./PCT APPLICATION(S)**

I hereby claim the benefit under Title 35, United States Code, §120 of the United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose all information that is material to patentability in accordance with Title 37, Code of Federal

Regulations, §1.56 which became available to me between the filing date of the prior application and the national or PCT international filing date of this application:

☒ no such U.S./PCT applications have been filed.

☐ such U.S./PCT application have been filed as follows:

Application Number	Date of Filing (dd/mm/yyyy)

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

I hereby appoint:

John B. Lungmus	18,566	Jeffrey S. Sharp	31,879	Joseph A. Williams, Jr.	38,659
Allen H. Gerstein	22,218	Martin J. Hirsch	32,237	Paul C. Craane	38,851
Nate F. Scarpelli	22,320	Richard M. LaBarge	32,254	Bryan J. Lempia	39,746
Michael F. Borun	25,447	James J. Napoli	32,361	David C. Read	39,811
Carl E. Moore, Jr.	26,487	Robert M. Gerstein	34,824	Thomas A. Miller	40,091
Richard H. Anderson	26,526	Michael R. Hull	35,902	William K. Merkel	40,725
Patrick D. Ertel	26,877	Anthony G. Sitko	36,278	Scott E. Baxendale	41,605
Richard B. Hoffman	26,910	Roger A. Heppermann	37,641	Brent E. Matthias	41,974
James P. Zeller	28,491	David A. Gass	38,153	Sandip H. Patel	43,848
Thomas I. Ross	29,275	Gregory C. Mayer	38,238	Kevin M. Flowers	44,684
Kevin D. Hogg	31,839	Michael R. Weiner	38,359	William J. Kramer	46,229

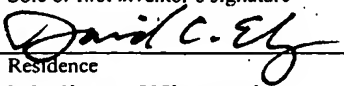
all of **MARSHALL, GERSTEIN & BORUN**, 233 S. Wacker Drive, Suite 6300, Sears Tower, Chicago, Illinois 60606-6357, jointly, and each of them severally, my attorneys at law/patent agent(s), with full power of substitution, delegation and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the U. S. Patent and Trademark Office connected therewith.

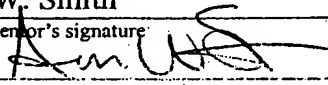
Please mail all correspondence to James P. Zeller, whose address is:

**MARSHALL, GERSTEIN & BORUN**  
233 S. Wacker Drive, Suite 6300  
Sears Tower  
Chicago, Illinois 60606-6357

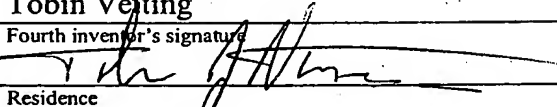
Please direct telephone calls to: James P. Zeller at (312) 474-6603.

Please direct facsimiles to: (312) 474-0448

Full name of sole or first inventor <b>David C. Eby</b>	
Sole or first inventor's signature 	Date <b>1/19/04</b>
Residence <b>Madison, Wisconsin</b>	
Citizenship <b>US</b>	
Mailing Address  <b>658 Pickford Street Madison, Wisconsin 53711</b> <b>3991 Forshavy Road Black Earth, WI 53515</b>	

Full name of second inventor, if any <b>Aaron W. Smith</b>	
Second inventor's signature 	Date <b>6.3.3</b>
Residence <b>Wooster, Ohio</b>	
Citizenship <b>US</b>	
Mailing Address  <b>1474 Smith Drive Wooster, Ohio 44691</b>	

Full name of third inventor, if any <b>Jayson J. Serrault</b>	
Third inventor's signature	Date
Residence <b>Wausau, Wisconsin</b>	
Citizenship <b>US</b>	
Mailing Address  <b>1007 Meadow Circle Wausau, Wisconsin 54401</b>	

Full name of fourth inventor, if any <b>Tobin Vetting</b>	
Fourth inventor's signature 	Date <b>6/23/03</b>
Residence <b>Kohler, Wisconsin</b>	
Citizenship <b>US</b>	
Mailing Address  <b>P.O. Box 116 Kohler, Wisconsin 53044</b>	

Full name of fourth inventor, if any Gilius A. Gaska	
Fourth inventor's signature <i>Gilius A. Gaska</i>	Date 6.5.03
Residence Medina, Ohio	
Citizenship US	
Mailing Address  1268 Freeport Drive Medina, Ohio 44256	

MARSHALL, GERSTEIN & BORUN

ATTORNEYS AT LAW

Russell C. Petersen  
Associate  
rpetersen@marshallip.com

May 14, 2003

Ms. Vicki Voltz  
Intellectual Property Administrator  
Rubbermaid Home Products  
1147 Akron Road  
Wooster, OH 44691

Re: New U. S. Patent Application  
Title: "Desktop Filing System"  
Inventors: David C. Eby et al.  
Our Reference: 29618/38939

Dear Vicki:

Enclosed please find Declaration and Assignment documents for execution by the inventors. Once the inventors have signed the documents and their signatures on the Assignment have been notarized, please return the executed documents to us at your earliest convenience.

We will file the applications upon our receipt of the executed documents. If you have any questions please do not hesitate to contact me.

Very truly yours,



Russell C. Petersen

RCP/mkg

Enclosures

cc: Mr. James P. Zeller (w/o encl.)  
Mr. Thomas A. Miller (w/o encl.)

**Rubbermaid**

Home Products

June 9, 2003

Jayson J. Serrault  
7510 Greenway Blvd. #108  
Middleton, Wisconsin 53575

Dear Jayson:

Enclosed are Declaration and Assignment documents for the "Desktop Filing System".

Please sign the forms, noting that the Assignment document needs to be notarized, and return in the self-addressed, stamped envelope at your earliest convenience.

Also, if the address on the Declaration is not correct, please make the change in pen.

Thanks!

*Vicki Voltz*

Vicki Voltz

Rubbermaid Home Products  
1147 Akron Road  
Wooster, OH 44691  
330.264.6464  
www.rubbermaid.com

A Newell Rubbermaid Company



August 1, 2003

Mr. Jayson J. Serrault  
7510 Greenway Blvd., #108  
Middleton, Wisconsin 53575

Re: Second Request for signature on official invention documents

Dear Jayson:

This is a second request for your signature on the enclosed Declaration and Assignment documents for the "Desktop Filing System" and the "Three-Sided File Divider".

Please sign the forms, have the Assignment document notarized, and return them to me in the self-addressed, stamped envelope as soon as possible.

Also, if the address on the Declaration is not correct, please make the change in pen.

Thank you,



Lynn Browning  
Legal Assistant

LB/lb

Enclosures



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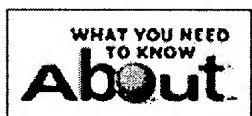
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